

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CEDRIC L. ANDERSON,) No. CV 15-5628-AB (PLA)
Plaintiff,) ORDER ACCEPTING FINDINGS,
v.) CONCLUSIONS, AND RECOMMENDATION
LAW OFFICE OF TIMOTHY MARTELLA,) OF UNITED STATES MAGISTRATE JUDGE
et al.,)
Defendants.)

I.

INTRODUCTION

On September 19, 2016, the United States Magistrate Judge issued a Final Report and Recommendation, recommending that this action be dismissed without leave to amend and with prejudice for failure to state a claim and failure to prosecute and follow court orders. On October 7, 2016, plaintiff filed Objections to the Final Report and Recommendation, along with a "Supplemental Pursuant to Fed. R. Civ. P. 10" ("Supplemental") and a "Supplemental Brief in Opposition to Lassiter v. Dep't of Soc." ("Supplemental Brief"). (ECF Nos. 60-62).

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DISCUSSION

3 In his Supplemental Brief, plaintiff objects that the Report and Recommendation presented
4 for the “first time” a new argument concerning Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18 (1981),
5 which, he argues, “is in legal error.” Plaintiff references a “U.S. Constitutional right to counsel in
6 dependency hearings,” but he cites no federal authority supporting such a right. (ECF No. 61 at
7 1-2). In addition, plaintiff argues in his Objections that the Magistrate Judge made an error of law
8 in applying Lassiter, and failed to determine if plaintiff had a Fourteenth Amendment “due process
9 right to counsel.” Plaintiff, however, is incorrect -- such a right to counsel simply does not exist
10 pursuant to the federal constitution. (Objs. at 2, 8-9 (citing state law cases)).

11 Also in his Supplemental Brief, plaintiff purports to argue that “separate investigations of
12 child abuse across two different states . . . could ultimately result in loss of physical liberty,” but
13 the civil rights action that plaintiff filed herein does not purport to state any claims arising from child
14 abuse investigations against plaintiff. (ECF No. 61 at 2).

15 In his Supplemental, plaintiff once again purports to “submit additional defendants” in this
16 action (consisting of County of Los Angeles Department of Children and Family Services
17 employees; attorneys, some of whom are already named in the action; Kevin and Rachella
18 Anderson, also already named in the action; and two state court judges) despite prior
19 admonishments that plaintiff must set forth all of the claims that he wishes to raise against all
20 defendants in one pleading. (See, e.g., ECF Nos. 13, 23). Plaintiff does not purport to explain
21 how adding these defendants would cure any of the deficiencies in his claims.

22 In his Objections, plaintiff argues that the Magistrate Judge misconstrued and
23 mischaracterized some of his state law claims. (Objs. at 3-4, 9-10, 14-17). However, the
24 Magistrate Judge is recommending that plaintiff's action be dismissed because it violates Rule 8
25 and it remains unclear what *federal civil rights claims* plaintiff is purporting to raise against which
26 defendants and what the legal and factual basis of each *federal civil rights claim* may be.
27 Accordingly, the sufficiency of plaintiff's state law claims has not been addressed. Regardless of
28 the nature of plaintiff's fraud claims, they simply do not give rise to a federal civil rights claim.

1 Further, although plaintiff contends that the Magistrate Judge ignored his case law that the “9th
 2 Circuit and other sister circuits establish[ed] a requirement for judges to ignore lengthy facts or
 3 confusing legal theories from *pro se* pleadings,” plaintiff fails to cite any such cases. (Objs. at 5).
 4 Regardless, no case from the Ninth, or any other, Circuit can overrule the Supreme Court’s
 5 holding that a “complaint must contain sufficient factual matter, accepted as true, to state a claim
 6 to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 681 (internal quotation marks omitted).
 7 Moreover, the Ninth Circuit has affirmed the dismissal of pleadings on Rule 8 grounds in cases
 8 in which a pleading is “argumentative, prolix, replete with redundancy, and largely irrelevant,”
 9 *McHenry*, 84 F.3d at 1177, 1180, or when a complaint is “verbose, confusing and conclusory,”
 10 *Nevije*, 651 F.2d at 674. See also Cafasso v. General Dynamics C4 Sys., 637 F.3d 1047, 1059
 11 (9th Cir. 2011) (noting that Rule 8(a) has been held to be violated by a pleading that was
 12 “needlessly long, or a complaint that was highly repetitious, or confused, or consisted of
 13 incomprehensible rambling”). Here, the Magistrate Judge found that plaintiff’s SAC fails to set
 14 forth simple, clear, and comprehensible factual allegations sufficient to allow the Court to discern
 15 the legal and factual basis of any of his federal civil rights claims, let alone draw the reasonable
 16 inference that any specific defendant is liable for any alleged wrongdoing.

17 Plaintiff’s conclusory assertions of the existence of a conspiracy (see Objs at 11-12) are
 18 insufficient to cure the deficiencies in his factual allegations and do not raise a reasonable
 19 inference that any defendant took any action to further a conspiracy. Such conclusory allegations
 20 fall far short of plaintiff’s “obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief.’”
 21 *Twombly*, 550 U.S. at 555.

22 Finally, plaintiff objects that the Magistrate Judge abused its discretion in denying his
 23 request for counsel. (Objs. at 25). However, after careful review and consideration of plaintiff’s
 24 pleadings and various motions, the Magistrate Judge repeatedly found that plaintiff has failed to
 25 show any likelihood of success on the merits. This Court agrees.

26 Accordingly, nothing in plaintiff’s Objections, Supplemental, or Supplemental Brief causes
 27 the Court to reject the recommendations in the R&R.

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CONCLUSION

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Third Amended Complaint, the other records on file herein, the Magistrate Judge's Final Report and Recommendation, and plaintiff's Objections to the Final Report and Recommendation and his Supplemental and Supplemental Brief. The Court has engaged in a de novo review of those portions of the Final Report and Recommendation to which objections have been made. The Court accepts the recommendations of the Magistrate Judge.

ACCORDINGLY, IT IS ORDERED:

1. The Final Report and Recommendation is accepted;
2. This action is dismissed with prejudice for failure to state a claim and failure to prosecute and follow court orders.
3. The clerk shall serve this Order on all counsel or parties of record.

DATED: January 19, 2017

HONORABLE ANDRÉ BIROTTE JR.
UNITED STATES DISTRICT JUDGE